

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No.: 3:18-CV-00197

BRUCE RHYNE and JANICE RHYNE,)
))
Plaintiffs,))
))
vs.))
))
UNITED STATES STEEL CORPORATION,))
SUNOCO, INC. (R&M) f/k/a Sun Company, Inc.))
and f/k/a/ Sun Oil Company, Inc., EXXONMOBIL))
CORPORATION, CHEVRON U.S.A., Inc. as))
Successor in Interest to Gulf Oil Company,))
SAFETY-KLEEN SYSTEMS, INC., CRC))
INDUSTRIES, INC., UNIVAR USA, INC.))
f/k/a Chemcentral Corp. and Van Waters &))
Rodgers, Inc., KANO LABORATORIES, INC., THE))
STECO CORPORATION, ACUITY SPECIALTY))
PRODUCTS, INC. f/k/a Acuity Specialty Products))
Group, Inc., THE SAVOGRAIN COMPANY, TURTLE))
WAX, INC., Individually and as Successor in Interest))
to Marvel Oil Company, Inc.,))
))
Defendants.)

DEFENDANT TURTLE WAX, INC.'S MOTION FOR SUMMARY JUDGMENT

Now Comes Defendant Turtle Wax, Inc., individually and incorrectly named as successor in interest to Marvel Oil Company, Inc. (hereinafter "Defendant" or "Turtle Wax") by and through undersigned counsel and moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment as to all claims against them in this action.¹ The pleadings, discovery responses, depositions and other documents and evidence contained in the Record establish that there are no genuine issues of material fact

¹ Defendant Turtle Wax reserves its right to renew its Motion for Summary Judgment after the Court rules on Motions to Exclude Plaintiffs' Experts, which per the scheduling order, are to be filed as Motions in Limine.

and that Defendant Turtle Wax is entitled to prevail as a matter of law in this action for the following reasons:

- Plaintiffs lack evidence to prove their claim for Negligence under North Carolina Product Liability Statute;
- Plaintiffs lack adequate evidence of a defect in any product sold by Defendant Turtle Wax or a breach of duty by Defendant Turtle Wax as there is not adequate evidence showing that Marvel Mystery Oil used by Mr. Rhyne contained benzene;
- Plaintiffs lack evidence of sufficient exposure to benzene from Marvel Mystery Oil to support their claims, and as such, Plaintiffs' claims should be dismissed;
- Plaintiffs' Design Defect Claims Fail For Lack Of A Feasible Alternative Design;
- Plaintiffs' Inadequate Warning Claims Fail For Lack Of Evidence;
- Defendant is also entitled to Summary Judgment on Plaintiffs' Breach of Implied Warranty Claims because Plaintiffs have failed to present adequate evidence of a product defect;
- Defendant is also entitled to Summary Judgment on Plaintiffs' Fraudulent Concealment claims because Plaintiffs have failed to present adequate evidence of any fraud by Defendant;
- There is not sufficient evidence to support a claim for punitive damages or a claim for loss of consortium against Defendant.

Defendant Turtle Wax respectfully requests that their Motion for Summary Judgment be GRANTED.²

This the 27th day of November, 2019.

CRANFILL SUMNER & HARTZOG LLP

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² Defendant Turtle Wax reserves its right to renew its Motion for Summary Judgment after the Court rules on Motions to Exclude Plaintiffs' Experts, which per the scheduling order, are to be filed as Motions in Limine.

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of November, 2019, I electronically filed the foregoing **DEFENDANT TURTLE WAX, INC.'S MOTION FOR SUMMARY JUDGMENT** with the clerk of the Court using the CM/ECF system which will send notification of such filing to the following attorneys of record:

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